



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

02 JUL 2002

FILE

Office: Miami

Date:

IN RE: Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(A)(i)(II). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act, 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

The record reflects the following:

1. On October 7, 1991, in Dade County, Florida, Case No. 91-79969, the applicant was arrested and charged with Count 1, possession of marijuana, and Count 2, lodging in open (sleeping on sidewalk). On November 6, 1991, the applicant was convicted of

Count 1; he was placed on probation and assessed \$92 in court costs. Count 2 was dismissed.

2. On September 19, 1989, in Dade County, Florida, the applicant was arrested and charged with (1) driving under the influence and (2) possession of marijuana. The court's final disposition of this arrest is not reflected in the record.

3. On August 5, 1989, in Dade County, Florida, Case No. M89-79740, the applicant was arrested and charged with possession of marijuana. On November 21, 1989, the applicant was found guilty of the crime; adjudication of guilt was withheld, and he was place of probation.

4. On December 21, 1984, in the Supreme Court of the State of New York, County of New York, Case No. 8160-84, the applicant was indicted for Count 1, burglary (2 counts); Count 2, burglary as an armed felony; and Count 3, assault in the second degree. On March 13, 1985, the applicant was convicted of assault in the second degree, and he was sentenced to five years of probation. The final disposition as to Counts 2 and 3 is not reflected in the record.

Assault (with a deadly weapon) is a crime involving moral turpitude (paragraph 4 above). Matter of Goodalle, 12 I&N Dec. 106 (BIA 1967); Matter of Baker, 15 I&N Dec. 50 (BIA 1974); Matter of Ptsai, 12 I&N 790 (BIA 1968). The arrest information reflects that the applicant was arrested for burglary of a dwelling with explosive or deadly weapon, display of a firearm during the commission of a felony, and assault on a non-participant during a felony. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his conviction of a crime involving moral turpitude.

The applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his convictions of possession of marijuana (paragraphs 1 and 3 above). There is no waiver available to an alien found inadmissible under this section except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.